

JAMES J. CLEARY
CLERK

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

2004 SEP -1 PM 4:39
U.S. DISTRICT COURT
SOUTHERN DIST., OHIO
WEST DIV CINCINNATI

Dana Goins,	:	District Court Case No. 01-185
Petitioner	:	Court of Appeals Case No. 02-4432
-vs-		:
Samuel Tambi, Warden	:	<u>NOTICE OF APPEAL</u>
Respondent	:	

Notice is hereby given that DANA GOINS, Petitioner-Appellant, pro se, in the above named case, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the final judgment from an order denying Petitioner's Motion to Reopen his Petition for Habeas Corpus entered in this action on the 23rd day of July, 2004.

A Motion for Extension of Time has been submitted, up to and including September 23, 2004, for Petitioner Goins to file his Notice of Appeal and Memorandum in Support.

Respectfully submitted,



Dana Goins, pro se
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Dana Goins,	:	Case No. C-01-185
Petitioner	:	
-vs-	:	
Samuel Tambi, Warden	:	<u>REQUEST FOR CERTIFICATE OF APPEALABILITY</u>
Respondent	:	

Now Comes Dana Goins, Petitioner, pro se, and requests this Honorable Court to allow him to proceed on appeal in *Forma Pauperis* in the above captioned case and to issue Petitioner a Certificate of Appealability pursuant to F.R.A.P. 22(b)(2) for the reasons set forth in the following memorandum in support.

MEMORANDUM IN SUPPORT

Petitioner Goins ("Goins") has previously filed a Request for Certificate of Appealability in the instant case that was denied May 21, 2003 by this Court. On January 16, 2004, Goins filed a Motion to Reopen his Petition for Habeas Corpus pursuant to cases at law that have been decided that would be favorable to Goins, therefore, the District Court erred when it denied Goins' motion to reopen his petition for Habeas Corpus. One of those cases was decided in this court, Granger v Hurt, 84 Fed.Appx. 500 (6th Cir. 2003). The second case, Wolfe v Randle, 267 F.Supp. 2d 743 (S.D.Ohio 2003) was decided in the Sixth District Court on March 27, 2003. In addition, there are three other cases that have since been decided, in Sister Circuits, nevertheless, they are similar to the instant case of Goins. Those cases are: United States of America ex rel. Elliot Thurmond, Petitioner v Vincent R. Mancusi, Warden Respondent, No. 67 C 526, 275 F.Supp. 508, 1967 U.S. Dist. Lexis 8626; Lewis v. Johnson, 359 F.3d 646 (3rd Cir. 2004), and U.S. v Edwards, 297 F.Supp.2d 813 (E.D.Pa. 2003). These cases have all been decided since Goins' request for a Certificate of Appealability has been denied, therefore they could not have been used in his previous request, but they have a relevant theme and that is that counsel refused to file a Notice of Appeal on their behalf when request to do so.

The controlling case is Wolfe v Randle which was decided in The United States District Court for the Southern District of Ohio, Western Division, March 25, 2003.